82-70
No.

Office - Supreme Court, U.S.
FILED
JUN 30 1982
ALEXANDER L. STEVAS,
CLERK

In The

Supreme Court of the United States

October Term, 1981

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PAUL CHIN,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

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# PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Donald E. Nawi
Of Counsel

DAVID BLACKSTONE, ESQ.
Attorney for Petitioner
Paul Chin
401 Broadway
New York, New York 10013
Tel.: (212) 226-6684

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered March 8, 1982.

## QUESTIONS PRESENTED

On or about May 5, 1982 James Loften, Roy Harris, Robert Goodwin and Patricia Gainer filed in this Court Petition No. 81-2070 (hereinafter the "Loften petition"), seeking certiorari from a March 8, 1982

judgment of the United States Court of Appeals for the Second Circuit. Petitioner Paul Chin, also a party to that judgment, joins in the Loften petition to the extent of the first three questions presented therein, which the Loften petition sets forth as follows:

> "1. Whether the court should grant the writ to clarify the extent to which probable cause to issue a wiretap order can be based upon unevaluated or conclusory information passed along to the issuing court as fact?
>
> 2. Whether the court should grant the writ to preserve the remaining vitality of the wiretap statutes requirement that normal investigative techniques be exhausted?
>
> 3. Whether the court should grant the writ so that it can exercise its supervisory powers to suppress the fruits of a wiretap order based upon misrepresentations, inaccuracies, and rumor and speculation presented as fact?"

An additional question Chin presents is:

What standards should govern joinder of defendants in massive conspiracy trials that also encompass racketeering and property forfeiture claims?

## THE PARTIES

Appellants in the Court of Appeals were James Loften, Roy Harris, Henry Morgan, Jr., Paul Chin, Patricia E. Gainer, Furman Starr, and Robert Goodwin. The appellee was the United States of America.

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## CITATION TO OPINIONS BELOW

The Court of Appeals affirmed petitioner's conviction in a Memorandum Judgment, not reported, reproduced in the Loften petition (and from there to here) as Appendix C. Chin, but not the other appellants, filed a rehearing petition, denied by the Court of Appeals on May 5, 1982 (Appendix A). An oral opinion of the District Court, not reported, denying Chin's motion to sever is Appendix B.

## JURISDICTION

The Court of Appeals judgment was entered March 8, 1982. A timely rehearing petition with a suggestion for rehearing en banc was denied May 5, 1982. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

## PROVISIONS INVOLVED

The provisions pertaining to the first three questions presented are set forth in Appendix E of the Loften petition. The question as to joinder involves F.R.Crim. P. 8, providing as follows:

> "(a) Joinder of Offenses. Two or more offenses may be charged in the same indictment, or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar

character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count."

STATEMENT OF THE CASE

Paul Chin was convicted on September 11, 1981 in the United States District Court for the Southern District of New York (Goettel, J.), following a jury trial, of conspiracy to violate the narcotics laws. Judge Goettel sentenced Chin to seven years imprisonment and also imposed a $5,000 fine. The United States Court of Appeals for the Second Circuit affirmed the conviction of Chin and six co-defendants on March 8, 1982 and then denied Chin's petition for rehearing. The Court of Appeals rejected Chin's contention that certain wiretap evidence, on which his conviction was based, should have been suppressed, and that he (Chin) should not have been joined in the Government's charges against James Loften.

## REASONS FOR GRANTING THE WRIT

### The Wiretap Question

The Loften petition raises and discusses the legality of wiretap evidence that was introduced at the Chin trial. Chin's voice was heard on those wiretaps; the wiretap evidence was crucial to Chin's conviction; and Chin raised the wiretap issue both in the district court and the Court of Appeals. Certiorari as to the wiretap questions should be granted as to Chin for the reasons stated in the Loften petition.

### The Joinder Question

The superseding indictment in this case (reproduced in Appendix A of the Loften petition) was novel. It alleged a massive narcotics conspiracy allegedly lasting from 1966 to 1980. It was possibly the first time, however, in which the Government claimed that the conspiracy existed for so long (fourteen years), and also joined with the multi-defendant narcotics charges a continuing enterprise count seeking forfeiture of the lead defendant James Loften's properties, and a racketeering count against the main defendants and an attorney. The trial, then, involved not only Loften's alleged narcotics dealings from 1966 but also, pursuant to the continuing enterprise and racketeering count, basically all of

Loften's commercial dealings during the same period. The trial lasted almost two months, the record was approximately 7,000 pages, and commercial matters covered at the trial included Loften's purchase of numerous pieces of real estate, a clothing store, nineteen motor vehicles, jewelry, funds and securities and an investment in a motion picture, and businesses relating to check cashing, liquor, pool halls, warehousing, gold and silver mines, diamonds and other mineral resources.

The Government's only charge against Chin was that he acted as go-between for Loften in the latter's attempts to obtain drugs from Asia in mid-1980. The district court nonetheless denied Chin's request for a severance and a separate trial which would have lasted several days at most. This Court should grant certiorari to resolve the extent to which the Government may not only continue to bring massive conspiracy prosecutions, but to enlarge such prosecutions in the narcotics field with extensive non-narcotics issues as well. Kotteakos v. United States, 328 U.S. 750 (1964); United States v. Borelli, 336 F.2d 376 (2d Cir. 1964), cert. denied, 379 U.S. 960 (1965); United States v. Cambindo Valencia, 609 F.2d 603 (2d Cir. 1979), cert. denied, 446 U.S. 940 (1980).

## CONCLUSION

For the foregoing reasons this petition for certiorari should be granted.

Respectfully submitted,

David Blackstone I.D.#

DAVID BLACKSTONE, ESQ.
Attorney for Petitioner
Paul Chin

June 28, 1982